

AEROVIRONMENT, INC. FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT – U.S. DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) CLAUSES

A. INCORPORATION OF DFARS CLAUSES

The DFARS clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Subcontract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract or higher-tier subcontract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Subcontract, and the SELLER shall have no right of direct action against the U.S. Government.

B. GOVERNMENT SUBCONTRACT

(1) This Subcontract is entered into by the parties in support of a U.S. Government prime contract. The term "Subcontract" as used in the text of this document (including parenthetical instructions), *but not in the clauses listed herein*, includes subcontracts or purchase orders between AV and SELLER.

(2) In all clauses listed herein, terms shall be revised to suitably identify the party to establish SELLER's obligations to AV and to the Government, and to enable AV to meet its obligations under the prime contract. *In the clauses listed herein*, and without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean AV the term "Contracting Officer" shall mean AV's subcontracting or purchasing representative, the term "Contractor" or "Offeror" shall mean SELLER, "Subcontractor" shall mean SELLER'S subcontractor or supplier, and the term "Contract" shall mean this subcontract or purchase order. For the avoidance of doubt, the words "Government" and "Contracting Officer" do not change (a) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, or (b) when title to property is to be transferred directly to the Government. The listed DFARS clauses are incorporated herein as if set forth in full text unless made inapplicable by their corresponding notes, if any. If any of the following DFARS clauses do not apply to this Subcontract, such clauses are considered to be self-deleting. The SELLER, by signing its offer, hereby certifies compliance with the following clauses and is, therefore, eligible for award. With respect to any applicable DFARS clauses incorporated into this Subcontract relating to rights in noncommercial technical data and noncommercial computer software and noncommercial computer software documentation, the SELLER grants to AV the right to use, disclose, modify, combine, integrate or make derivative works of any noncommercial technical data, noncommercial computer software and/or noncommercial computer software documentation delivered under this Subcontract to the extent necessary, and for such period as is required, for AV to complete its performance under AV's U.S. Government programs.

DFARS 252.204-7008	sensitive and inappropriate for release to the public)
DFARS 252.204-7009	
DFARS 252.204-7012	Export-Controlled Items Limitations on the Use or Disclosure of Third Party Contractor Reported Cyber Incident Information Safeguarding of Unclassified Controlled Technical Information (reports required under paragraph (d) shall be made through AV; insert "and AV" after "Contracting Officer" in paragraph (d) (5))
DFARS 252.204-7015	Notice of Authorized Disclosure of Information to Litigation Support Contractors
DFARS 252.208-7000	Intent To Furnish Precious Metals As Government-Furnished Material (applicable to subcontracts when the item being purchased contains precious metals)
DFARS 252.211-7003	Item Identification and Valuation (SELLER's obligations under this clause are limited to cooperating with AV's efforts to comply with the clause, including granting AV access to SELLER's deliverables at its facilities and to appropriate property records)
DFARS 252.211-7007	Reporting Of Government-Furnished Property (applicable to subcontracts when FAR 52.245-1 is in the prime contract, and SELLER is in possession of Government Property; SELLER will comply with paragraph (d) of this clause)
DFARS 252.215-7000	Pricing Adjustments (applicable to subcontracts when FAR 52.215-11, FAR 52. 215-12 or FAR 52.215-13 applies to this Subcontract)
DFARS 252.216-7009	Allowability of Legal Costs Incurred in Connection with a Whistleblower Proceeding
DFARS 252.223-7001	Hazard Warning Labels (applicable to subcontracts for goods that require submission of hazardous material data sheets (see FAR 23.302(c))
DFARS 252.223-7002	Safety Precautions for Ammunition and Explosives ("Government" means the Government and/or AV)
DFARS 252.223-7003	Change In Place Of Performance – Ammunition and Explosives
DFARS 252.223-7006 & Alt. I	Prohibition On Storage And Disposal Of Toxic And Hazardous Materials (applicable to subcontracts that require, may require, or permit SELLER to treat or dispose of non-DoD-owned toxic or hazardous materials as defined in this clause; includes Alternate I if it is in the prime contract)

C. CLAUSES APPLICABLE TO ALL SUBCONTRACTS WITHOUT REGARD TO DOLLAR VALUE:

DFARS 252-203-7002	Requirement to Inform Employees of Whistleblower Rights
DFARS 252-203-7003	Agency Office of the Inspector General
DFARS 252.204-7000	Disclosure of Information (applicable to subcontracts when SELLER will have access to or generate unclassified information that may be

DFARS 252.223-7007	Safeguarding Sensitive Conventional Arms, Ammunition, And Explosives (applicable to subcontracts for (i) the development, production,
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	manufacture, or purchase of arms, ammunition, and explosives (AA&E), or (ii) when AA&E will be provided to SELLER as Government-furnished property)	DFARS 252.225-7039	Defense Contractors Performing Private Security Functions Outside of the United States
		DFARS 252.225-7040	
DFARS 252.223-7008	Prohibition of Hexavalent CHROMIUM (applicable to all subcontracts for supplies, maintenance and repair services, or construction materials)		Contractor Personnel Supporting U.S. Armed Forces Deployed Outside The United States (applicable to subcontracts that will be performed outside the United States in areas of combat and other significant military operations designated by the Secretary of Defense, contingency operations, humanitarian or peacekeeping operations, or other military operations or exercises designated by the Combatant Commander)
DFARS 252.225-7001	Buy American Act and Balance Of Payments Program		
DFARS 252.225-7002	Qualifying Country Sources as Subcontractors		Anti-Terrorism/Force Protections Policies for Defense Contractors outside the United States (applies where SELLER will be performing or traveling outside the U.S.)
DFARS 252.225-7007	Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies (applicable to subcontracts for the acquisition of items covered by the United States Munitions List of the International Traffic in Arms Regulation)	DFARS 252.225-7043	
DFARS 252.225-7008	Restriction On Acquisition Of Specialty Metals (applicable to subcontracts for the delivery of specialty metals as end items to AV or SELLER to the extent necessary to ensure compliance of the end products that AV will deliver to the Government when DFARS 252.225-7009 is in the prime contract)	DFARS 252.225-7048 DFARS 252.225-7993	Export-Controlled Items Dev 2015-00016 Prohibition on Contracting with the enemy Dev 2015-00016 Additional access to Contractor and Subcontractor In the United States Central Command Theater of Operations
		DFARS 252.225-7994	
DFARS 252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals (excluding paragraph (d), applicable to subcontracts for items containing specialty metals to the extent necessary to ensure compliance of the end products that will be delivered to the Government)	DFARS 252.227-7013	Rights In Technical Data – Noncommercial Items (applicable to solicitations and resulting subcontracts when AV will be required to deliver ultimately to the Government SELLER’s technical data pertaining to noncommercial items, or pertaining to commercial items for which the Government will have paid for any portion of the development costs)
DFARS 252.225-7010	Commercial Derivative Military Article – Specialty Metals Compliance Certificate (applicable to solicitations for subcontracts that will incorporate DFARS 252.225-7009)	DFARS 252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (applicable to solicitations and resulting subcontracts when SELLER’s performance will require delivery of computer software or computer software documentation)
DFARS 252.225-7012	Preference for Certain Domestic Commodities		Technical Data – Commercial Items (applicable whenever any technical data related to commercial items developed in any part at private expense will be provided under a subcontract for ultimate delivery to the Government)
DFARS 252.225-7013	Duty-Free Entry		
DFARS 252.225-7015	Restriction on Acquisition of Hand or Measuring Tools	DFARS 252.227-7015	Rights in Bid or Proposal Information (applicable to solicitations and resulting subcontracts that will include DFARS 252.227-7013, 252.227-7014, or 252.227-7018)
DFARS 252.225-7016	Restriction on Acquisition of Ball and Roller Bearings		
DFARS 252.225-7021	Trade Agreements (applies if the Work contains other than U.S.-made, qualifying country, or designated country end products, in lieu of FAR 52.225-5)	DFARS 252.227-7016	Identification and Assertion of Use, Release, Or Disclosure Restrictions (applicable to solicitations and resulting subcontracts that will include DFARS 252.227-7013, 252.227-7014,
DFARS 252.225-7025	Restriction on Acquisition of Forgings		
DFARS 252.225-7027	Restriction on Contingent Fees For Foreign Military Sales		
DFARS 252.225-7028	Exclusionary Policies and Practices of Foreign Governments	DFARS 252.227-7017	
DFARS 252.225-7030	Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate		
DFARS 252.225-7031	Secondary Arab Boycott of Israel		

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DFARS 252.227-7018	or 252.227-7018) Rights in Noncommercial Technical Data and Computer Software – Small Business Innovation Research (SBIR) Program	DFARS 252.234-7004	Cost and Software Data Reporting System (Applies as described in the CSDR contract plan)
DFARS 252.227-7019	Validation of Asserted Restrictions – Computer Software (applicable to all subcontracts when SELLER’s performance includes the furnishing of computer software that AV will furnish ultimately to the Government)	DFARS 252.235-7003	Frequency Authorization (applicable to subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required)
DFARS 252.227-7025	Limitation on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends	DFARS 252.239-7016	Telecommunications Security Equipment, Devices, Techniques, And Services (applicable to subcontracts that require the securing of telecommunications)
DFARS 252.227-7026	Deferred Delivery of Technical Data or Computer Software	DFARS 252.239-7017	Notice of Supply Chain Risk ((Applies if this Subcontract involves the development or delivery of any information technology, whether acquired as a service or as a supply; insert “or AV” after “Government” throughout)
DFARS 252.227-7027	Deferred Ordering Of Technical Data or Computer Software		
DFARS 252.227-7028	Technical Data or Computer Software Previously Delivered to the Government (applicable to solicitations and resulting subcontracts that will require SELLER to deliver technical data)	DFARS 252.239-7018	Supply Chain Risk (Applies if this Subcontract involves the development or delivery of any information technology, whether acquired as a service or as a supply; insert “or AV” after “Government” throughout)
DFARS 252.227-7030	Technical Data – Withholding of Payment (applicable to solicitations and resulting subcontracts that will include DFARS 252.227-7013 or 252.227-7018)	DFARS 252.243-7001	Pricing of Contract Modifications
DFARS 252.227-7037	Validation of Restrictive Markings on Technical Data (applicable to subcontracts requiring the delivery of technical data)	DFARS 252.244-7000	Subcontracts for Commercial Items
DFARS 252.227-7038	Patent Rights – Ownership by the Contractor (Large Business) (applicable to subcontracts for experimental, developmental, or research work if the SELLER is not a small business or nonprofit organization, unless a different patent rights clause is required by FAR 27.303)	DFARS 252.244-7001	Contractor Purchasing System Administration
DFARS 252.227-7039	Patents – Reporting of Subject Inventions (applicable to solicitations and resulting subcontracts that will include the clause at FAR 52.227-11)	DFARS 252-246-7000	Material Inspection and Receiving Report
DFARS 252.228-7001	Ground And Flight Risk (applicable to solicitations and resulting subcontracts for the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft unless an exception listed at DFARS 228.370(b)(1) applies)	DFARS 252.246-7001	Warranty of Data (applicable to solicitations and resulting subcontracts that will include DFARS 252.227-7013)
DFARS 252.228-7005	Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles	DFARS 252.246-7003	Notification Of Potential Safety Issues (applicable to subcontracts for (i) repairable or consumable parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system)
DFARS 252.231-7000	Supplemental Cost Principles (applicable to solicitations and resulting subcontracts that are subject to the principles and procedures described in FAR Subparts 31.1, 31.2, 31.6, or 31.7)	DFARS 252.246-7007	Contractor Counterfeit Electronic Part Detection And Avoidance System (applicable to solicitations and resulting subcontracts for (i) electronic parts; (ii) end items, component parts, or assemblies containing electronic parts; and (iii) services where the subcontractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service)
		DFARS 252.247-7024	Notification of Transportation of Supplies by Sea

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D. CLAUSES APPLICABLE TO SUBCONTRACTS OF \$30,000 OR MORE ALSO INCLUDE:

DFARS 252.209-7004 Subcontracting With Firms That Are Owned or Controlled By the Government of a Terrorist Country

E. CLAUSES APPLICABLE TO SUBCONTRACTS OF \$150,000 OR MORE ALSO INCLUDE:

DFARS 252.249-7002 Notification of Anticipated Contract Terminations or Reductions (except paragraph (d)(1))

F. CLAUSES APPLICABLE TO SUBCONTRACTS OVER THE SIMPLIFIED ACQUISITION THRESHOLD (AS DEFINED AT FAR 2.101; CURRENTLY \$250,000) ALSO INCLUDE:

DFARS 252.203-7001 Prohibition on Persons Convicted Of Fraud or Other Defense-Contract-Related Felonies

DFARS 252.247-7023 Transportation of Supplies by Sea (applies in lieu of FAR 52.247-64; in the first sentence of paragraph (g), insert a period after "Contractor" and delete the balance of the sentence; paragraphs (f) and (g) shall not apply if the subcontract is valued at or below the simplified acquisition threshold)

G. CLAUSES APPLICABLE TO SUBCONTRACTS OVER \$500,000 ALSO INCLUDE:

DFARS 252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns

H. CLAUSES APPLICABLE TO SUBCONTRACTS OVER \$700,000 ALSO INCLUDE:

DFARS 252.219-7003 Small Business Subcontracting Plan (DoD Contracts (applicable to subcontracts under prime contracts that contain FAR 52.219-9; include Alternate I if it is included in the prime contract)

DFARS 252.219-7004 Small Business Subcontracting Plan (Test Program) (applicable to subcontracts that offer further subcontracting possibilities)

DFARS 252.225-7004 Quarterly Reporting of Actual Contract Performance outside the United States (applicable to subcontracts when SELLER is a first-tier subcontractor)

I. CLAUSES APPLICABLE TO SUBCONTRACTS OVER \$1,000,000 ALSO INCLUDE:

DFARS 252.222-7006 Restrictions on the Use of Mandatory Arbitration Agreements (applicable to subcontracts issued under prime contracts containing the clause)

CERTIFICATION Regarding Compliance with DFARS 252.222-7006

If this clause is included in AV's prime contract or higher-tier subcontract, this certification is applicable to subcontracts over \$1,000,000 issued under DoD contracts, except for subcontracts for the acquisition of commercial items or commercially available off-the-shelf items.

By SELLER's acceptance of this Subcontract:

(i) SELLER certifies that it shall not enter into, and shall not take any action to enforce any provision of, any agreement with any of its employees or independent contractors performing work related to this subcontract or purchase order that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any claim under Title VII of the Civil Rights Act of 1964, or any tort related to or arising out of a sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; and

(ii) SELLER certifies that it requires each of its lower-tier subcontractors that performs work under this Subcontract and that is a "covered subcontractor" as defined in DFARS 252.222-7006, to agree not to enter into, and not to take any action to enforce any provision of, any agreement with any of its employees or independent contractors performing work related to this Subcontract that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any claim under Title VII of the Civil Rights Act of 1964, or any tort related to or arising out of a sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

DFARS 252.225-7033 Waiver of United Kingdom Levies (applicable to subcontracts where a lower-tier subcontract exceeding \$1 million with a U.K. firm is anticipated)

J. CLAUSES APPLICABLE TO SUBCONTRACTS OVER \$1,500,000 ALSO INCLUDE:

DFARS 252.211-7000 Acquisition Streamlining

J. CLAUSES APPLICABLE TO SUBCONTRACTS OVER \$2,000,000 ALSO INCLUDE:

DFARS 252.215-7009 Proposal Adequacy Checklist

K. CLAUSES APPLICABLE TO SUBCONTRACTS OVER \$5,000,000 ALSO INCLUDE:

DFARS 252.203-7003 Agency Office of the Inspector General (applicable only if FAR 52.203-13 is included in this Subcontract)

DFARS 252.203-7004 Display Of Fraud Hotline Poster(s) (applicable to all subcontracts except those that are for acquisition of commercial items, or that will be performed entirely outside the United States; if applicable, used in lieu of FAR 52.203-14 "Display of Hotline Poster(s)")



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L. Business Systems Rule:

SELLER shall communicate and otherwise deal directly with the United States Government Contracting Officer to the extent practicable and permissible as to all matters relating to any of SELLER's business systems under any of the following applicable Business Systems clauses: DFARS 252.215-7002 "Cost Estimating System Requirements," DFARS 252.234-7002 "Earned Value Management System," DFARS 252.242-7004 "Material Management and Accounting System," DFARS 252.242-7006 "Accounting System Administration," DFARS 252.244-7001 "Contractor Purchasing System Administration," and DFARS 252.245-7003 "Contractor Property Management System Administration" (hereinafter referred to collectively as "Business Systems clauses"). SELLER shall provide Av with copies of communications with the United States Government respecting significant deficiencies in any of SELLER's business systems under the applicable Business Systems clauses, provided that SELLER shall not be required to disclose to AV information confidential to SELLER contained in any such communications. In addition to any other remedies provided by law or under this subcontract, SELLER hereby indemnifies and holds AV harmless to the full extent of any loss, damage, or expense, including without limitation any withholds under DFARS 252.242-7005, "Contractor Business Systems," incurred by AV that result from any government action, claim, withhold or similar action against AV that results in a loss or expense TO AV of any type, including, but not limited to, lost profit or fee, legal costs, interest, and indirect cost markups, because of a failure of SELLER or its lower-tier subcontractors to comply with any of the Business Systems clauses.

The above FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT – US DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) CLAUSES are hereby accepted.

Signature

Print Name

Title

Company Name

Date